

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

J. LEE,

Plaintiff,

No. 1:17-CV-01230-JB-LF

v.

THE BOARD OF REGENTS OF THE
UNIVERSITY OF NEW MEXICO, and
GARNETT S. STOKES, in her official capacity
as the President of the University of New Mexico,

Defendants.

**JOINT STATUS REPORT AND
PROVISIONAL DISCOVERY PLAN**

Pursuant to FED. R. CIV. P. 26(f), a meeting was held telephonically on April 18, 2019, and was attended by:

Arlyn G. Crow and Alana M. De Young, ADAMS+CROW LAW FIRM, for Plaintiff; and

Quentin Smith, Sheehan & Sheehan, P.A., for Defendants.

NATURE OF THE CASE

Plaintiff, J. Lee, is a former graduate student of the University of New Mexico (“UNM”) who was expelled from UNM for alleged sexual misconduct. Plaintiff brought suit in New Mexico State Court for injunctive and declaratory relief under Article II, § 18 of the New Mexico Constitution, the Fourteenth Amendment of the United States Constitution, 42 U.S.C. § 1983, as well as the New Mexico Declaratory Judgment Act, NMSA 1978 § 44-6-1 *et seq.* and the federal Declaratory Judgment Act, 28 U.S.C. § 2201, for alleged violations of his state and federal constitutional rights.

AMENDMENTS TO PLEADINGS AND JOINDER OF PARTIES

Plaintiff intends to file: None anticipated at this time.

Plaintiff should be allowed until June 5, 2019 to move to amend the pleadings and until June 5, 2019 to join additional parties in compliance with the requirements of FED. R. CIV. P. 15(a).

Defendant intends to file: None anticipated at this time.

Defendants should be allowed until July 5, 2019 to move to amend the pleadings and until July 5, 2019 to join additional parties in compliance with the requirements of FED. R. CIV. P. 15(a).

STIPULATIONS

The parties hereto stipulate and agree that venue is properly laid in this District; that the United States District Court for the District of New Mexico has jurisdiction of the parties and the subject matter.

The parties are willing to further stipulate to the following facts: Any facts admitted in the pleadings.

The parties further stipulate and agree that the law governing this case is: 42 U.S.C. § 1983, and federal caselaw regarding procedural due process.

PLAINTIFF'S CONTENTIONS

Plaintiff contends he has a protected property and liberty interest in his continued enrollment at UNM and in his good reputation. For that reason, Defendant UNM was required to provide Plaintiff with adequate due process prior to imposing any sanction for alleged misconduct. UNM, however, failed to provide fair and adequate due process prior to Plaintiff's expulsion from UNM. Specifically, UNM failed to provide an evidentiary hearing, to include the cross-examination of witnesses and presentation of evidence in his defense, applied the wrong evidentiary standard, and

failed to provide Plaintiff with adequate notice that he faced sanctions relating to underage drinking with sufficient time to prepare an adequate defense prior to a hearing.

Not only did UNM fail to provide adequate due process, UNM's only process for Plaintiff was an "investigation" by UNM OEO, where the UNM investigators decided the scope and breadth of that investigation, which witnesses to interview, the weight that should be given to any information they gathered, and the credibility of the witnesses. Even though Plaintiff was never given an opportunity to be privy to the investigative process, to rebut or counter the evidence, to examine or otherwise question any witnesses (or even know the identity of all such witnesses), or to present Plaintiff's story in front of an impartial panel, UNM OEO made a probable cause determination that Plaintiff violated Defendant UNM Policy. Because the process UNM afforded was fundamentally unfair, it violated State and Federal due process laws, entitling Plaintiff to enjoin UNM from taking such action.

DEFENDANTS' CONTENTIONS

Defendants deny the validity of Plaintiff's claims for violation of due process as pled in her Complaint for Injunctive and Declaratory Relief and Damages [Doc. 1-1]. Defendants incorporate by reference the admissions, denials, and defenses set forth in Defendants' Answer to Plaintiff's Complaint for Injunctive and Declaratory Relief and Damages [Doc. 43]. The process that led to Plaintiff's expulsion from UNM did not violate Plaintiff's state or federal constitutional right to due process. Plaintiff had sufficient notice of the charges against him and a meaningful opportunity to respond to those charges. Plaintiff was not entitled to any greater procedural safeguards than he received prior to his expulsion from UNM, especially in light of his own admissions to law enforcement officers that established he had engaged in sexual misconduct. Defendants contend that

the Court should ultimately find that Plaintiff received adequate due process and dismiss his remaining claims for injunctive and declaratory relief.

PROVISIONAL DISCOVERY PLAN

The parties jointly propose to the Court the following discovery plan:

A. PLAINTIFF'S ANTICIPATED WITNESSES:

1. **Plaintiff J. Lee**
c/o ADAMS+CROW LAW FIRM
5051 Journal Center Blvd. NE, Suite 320
Albuquerque, NM 87109
(505) 582-2819

Plaintiff is expected to testify regarding his allegations and claims in this lawsuit.

2. **Laura Vele Buchs**
Former UNM EEO Compliance Specialist
c/o Sheehan & Sheehan, P.A.
P.O. Box 271
Albuquerque, NM 87103
(505) 247-0411

Ms. Vele Buchs is expected to testify regarding her participation in the investigation, UNM's policies, procedures, and standards for conducting such investigations, her training on investigations and UNM's policies and procedures, and her knowledge of any other issues raised by the Complaint.

3. **Francie Cordova**
Director of UNM Office of Equal Opportunity
c/o Sheehan & Sheehan, P.A.
P.O. Box 271
Albuquerque, NM 87103
(505) 247-0411

Ms. Cordova is expected to testify regarding her participation in the investigation, UNM's policies, procedures, and standards for conducting such investigations, her training on investigations and UNM's policies and procedures, and her knowledge of any other issues raised by the Complaint.

4. **Heather Cowan**
Former UNM Title IX Coordinator

c/o Sheehan & Sheehan, P.A.
P.O. Box 271
Albuquerque, NM 87103
(505) 247-0411

Ms. Cowan is expected to testify regarding her participation the investigation, UNM's policies, procedures, and standards for conducting such investigations, her training on investigations and UNM's policies and procedures, and her knowledge of any other issues raised by the Complaint.

5. **Megan Chibanga**
UNM Resident Education Manager
(Former UNM Student Conduct Officer)
c/o Sheehan & Sheehan, P.A.
P.O. Box 271
Albuquerque, NM 87103
(505) 247-0411

Ms. Chibanga is expected to testify regarding the administrative hearing, UNM's policies, procedures, and standards for student discipline, her training on all such policies and procedures, and her knowledge on any other issues raised by the Complaint.

6. **Defendant President Garnett S. Stokes**
UNM President
c/o Sheehan & Sheehan, P.A.
P.O. Box 271
Albuquerque, NM 87103
(505) 247-0411

President Stokes may be called testify as to UNM's policies and procedures, standards for conduct and discipline, standards for investigations, training for UNM OEO employees in investigations, policies and procedures, and her knowledge on any other issues raised by the Complaint.

7. Individuals/witnesses identified in UNM's investigation of the alleged misconduct.
Contact information currently unknown

The individuals identified in UNM's investigation, including the unknown "witnesses" interviewed and/or identified by UNM in the investigation may be called to testify about the investigation and their knowledge of any other issues raised by the Complaint.

8. Any other individuals identified in any documents produce din discovery in this case.

9. Any other individuals identified by Defendants.
10. Any other individuals identified in discovery.
11. Any rebuttal witnesses.

B. PLAINTIFF'S ANTICIPATED EXHIBITS:

1. Correspondence to/from UNM and Plaintiff, including the FLD and the PLD.
2. Office of Equal Opportunity ("OEO") Title IX Investigative File.
3. NM Policies and Procedures relating to student discipline, including the student grievance procedure, code of conduct, OEO's discrimination claims procedure, and any other OEO and/or administrative policies and procedures applicable to this case.
4. Student Affairs File.
5. Any other exhibits identified by Defendants.
6. Any other exhibits identified in discovery.
7. Any rebuttal exhibits.

C. PLAINTIFF'S ANTICIPATED EXPERTS:

Plaintiff has not yet determined whether he will call any expert witnesses to testify in this case.

D. DEFENDANTS' ANTICIPATED WITNESSES:

1. Plaintiff J. Lee
c/o Adams+Crow Law Firm
5051 Journal Center Blvd. NE, Suite 320
Albuquerque, NM 87109
(505) 582-2819

Plaintiff is expected to testify regarding his allegations and claims in this lawsuit.

2. Megan Chibanga
UNM Resident Education Manager
(Former UNM Student Conduct Officer)

c/o Sheehan & Sheehan, P.A.
P.O. Box 271
Albuquerque, NM 87103
(505) 247-0411

Ms. Chibanga is expected to testify regarding the administrative hearing that she presided over and her decision to expel Plaintiff for sexual misconduct, as well as UNM's policies, procedures, and standards for student discipline.

3. Francie Cordova
Director of UNM Office of Equal Opportunity
c/o Sheehan & Sheehan, P.A.
P.O. Box 271
Albuquerque, NM 87103
(505) 247-0411

Ms. Cordova is expected to testify regarding her participation in the Title IX investigation that led to Plaintiff's referral to the Office of Dean of Students for sanctions, as well as UNM's policies, procedures, and standards for conducting such investigations.

4. Heather Cowan
Former UNM Title IX Coordinator
c/o Sheehan & Sheehan, P.A.
P.O. Box 271
Albuquerque, NM 87103
(505) 247-0411

Ms. Cowan is expected to testify regarding her participation in the Title IX investigation that led to Plaintiff's referral to the Office of Dean of Students for sanctions, as well as UNM's policies, procedures, and standards for conducting such investigations.

5. Laura Vele Buchs
Former UNM EEO Compliance Specialist
c/o Sheehan & Sheehan, P.A.
P.O. Box 271
Albuquerque, NM 87103
(505) 247-0411

Ms. Vele Buchs is expected to testify regarding her participation in the Title IX investigation that led to Plaintiff's referral to the Office of Dean of Students for sanctions, as well as UNM's policies, procedures, and standards for conducting such investigations.

6. Any other individuals identified by Plaintiff

7. Any other individuals identified in discovery
8. Any rebuttal witnesses

E. DEFENDANTS' ANTICIPATED EXHIBITS:

1. Office of Equal Opportunity ("OEO") Title IX Investigative File
2. OEO Policies and Procedures Related to Title IX Investigations
3. UNM Administrative Policies and Procedures Manual
4. Student Affairs File for J. Lee
5. Any other exhibits identified by Plaintiff
6. Any other exhibits identified in discovery
7. Any rebuttal exhibits

F. DEFENDANTS' ANTICIPATED EXPERTS:

Defendants have not yet determined whether they will call any expert witnesses to testify in this case.

Discovery will be needed on the following subjects: Plaintiff's claim for injunctive and declaratory relief and Defendants' defenses.

Maximum of twenty-five (25) interrogatories by each party to any other party. (Responses due thirty (30) days after service).

Maximum of fifty (50) requests for admission by each party to any other party. (Responses due thirty (30) days after service).

Maximum of six (6) depositions by Plaintiff and six (6) depositions by Defendants.

Each deposition (other than of Plaintiff and Rule 30(b)(6) deposition) limited to maximum of four (4) hours, unless extended by agreement of parties.

Reports from retained experts under Rule 26(a)(2) due:

from Plaintiff by July 5, 2019.

from Defendants by August 5, 2019.

Supplementation under Rule 26(e) due within fourteen (14) days of discovery of the need to supplement.

All discovery commenced in time to be complete by September 3, 2019.

PRETRIAL MOTIONS

Plaintiff intends to file:

Defendant intends to file: Motion for Summary Judgment.

ESTIMATED TRIAL TIME

The parties estimate trial will require four (4) days.

X This is a non-jury case.

_____ This is a jury case.

The parties request a pretrial conference in November 2019.

SETTLEMENT

The possibility of settlement in this case is considered unlikely. The parties request a settlement conference in October 2019 (if required by the Court).

EXCEPTIONS

None.

APPROVED WITHOUT EXCEPTIONS:

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